

MINUTE ITEM

This Calendar Item No. 40
 was approved as Minute Item
 No. 40 by the State Lands
 Commission by a vote of 3
 to 0 at its 12-12-90
 meeting.

CALENDAR ITEM

C 40

A)
) Statewide
 S)

12/12/89
 W 23390
 Pelkofer

PROGRAMMATIC AGREEMENT AMONG THE CALIFORNIA STATE LANDS COMMISSION (SLC), U.S.D.I BUREAU OF LAND MANAGEMENT (BLM), THE ADVISORY COUNCIL OF HISTORIC PRESERVATION, AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, FOR LAND EXCHANGES IN CALIFORNIA

The Bureau of Land Management transfers land to the State Lands Commission to carry out various program objectives. The BLM is required by federal law (36 CFR 800 et seq.) to be responsible for cultural resource protection on its lands. Such responsibility does not cease with the transfer of lands which may contain such cultural resources to another party, without the approval of the National Advisory Council for Historic Preservation and the State Historic Preservation offices.

This Programmatic Agreement assures that cultural resources which may exist on such lands will be adequately managed by the Commission (State) as the recipient. The State agrees to manage these resources, if any exist on the land acquired from the BLM as required under Section 106 and 110F of the National Historic Preservation Act (NHPA) (16 USC and 36 CFR 800).

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that CEQA applies only to projects which have the potential for

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causing a significant effect on the environment. The staff believes there is no possibility that this project may have a significant effect on the environment.

Authority: 14 Cal. Code Regs. 15061(b)(3).

2. While staff of the BLM, Commission, and State Historic Preservation offices attempt to avoid the selection of land which may contain sensitive sites, procedures within this Agreement are now performed by SLC whenever cultural resources are found on State land affected by a lease, timber sale, or other project (under CEQA Guidelines).

EXHIBIT: A. Copy of five-page Programmatic Agreement.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. (14 CAL. CODE REGS. 15061(b)(3))
2. AUTHORIZE THE EXECUTIVE OFFICER, OR HIS DESIGNEE, TO EXECUTE THE PROGRAMMATIC AGREEMENT BETWEEN THE COMMISSION AND BUREAU OF LAND MANAGEMENT, U.S.D.I., CONCERNING CULTURAL RESOURCES (SUBSTANTIALLY IN THE FORM ATTACHED AS EXHIBIT "A").

EXHIBIT "A"

PROGRAMMATIC AGREEMENT

AMONG

THE BUREAU OF LAND MANAGEMENT
 THE CALIFORNIA STATE LANDS COMMISSION
 THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
 THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

IMPLEMENTATION OF LAND TRANSFERS IN CALIFORNIA

WHEREAS, the Bureau of Land Management (BLM) proposes to administer the transfer of certain Public Lands in the State of California to the State Lands Commission (SLC); authorized by Public Law 61-219, Section 24 and Public Law 94-579. Title II and,

WHEREAS, it is likely that cultural properties included in or eligible for inclusion in National Register of Historic Places are located on the lands to be transferred by the BLM to the SLC; and,

WHEREAS, the BLM has determined that the implementation of land transfers from the BLM to the SLC may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council and the California State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of National Historic Preservation Act; (16 U.S.C 470f), and Section 110 (f) of the same act (16 U.S.C. 470th-2(f)) and

WHEREAS, the SLC, on behalf of the State of California, shall succeed to the rights and responsibilities of BLM for taking into account the effects on cultural properties of projects on lands to be transferred under this agreement;

NOW, THEREFORE, the SLC, the BLM, the Council, and the SHPO agree that the implementation of land transfers shall be administered in accordance with the following stipulations to satisfy BLM's Section 106 responsibility for all individual aspects of the land transfers.

A. The BLM will ensure that the following measures are carried out:

1. Identification. In consultation with the State Historic Preservation Office (SHPO) and in a manner responsive to the requirements of Section 110(a) of the National Historic Preservation Act, the BLM authorized officer will determine through existing data review whether archeological, historic or Native American properties are known or are likely to occur on the lands identified for transfer.

2. Evaluation for National Register Eligibility. All cultural properties identified in A.1 will be evaluated by the BLM for National Register of Historic Places eligibility following the requirements of 36 CFR 60, and 800.
 3. BLM will provide SHPO and SLC with copies of all cultural resource data in accordance with Section 102 and 202 of the Federal Land Policy and Management Act of 1976 for inclusion in the State Inventory conducted pursuant to 36 CFR 61.
 4. BLM will notify appropriate Native American groups prior to the land transfer to SLC. The Native American groups may participate in cultural resource identification and evaluation should they so desire.
 5. The obligation of BLM under Sections 106 and 110 of the NHPA and 36 CFR 800 will terminate upon transfer of public land to the State of California.
- B. The SHPO will ensure that the following measures are carried out:
1. Respond to any BLM submission pursuant to Section A of this agreement within 30 days unless a longer time is agreed upon.
 2. SHPO will consult with SLC as appropriate on actions stipulated in Section C.
- C. The SLC will ensure that the following measures are carried out:
1. Upon receipt of subject lands from BLM, the SLC agrees to treat all cultural properties acquired in accord with the provisions of this agreement and in the same manner as is required of BLM under 36 CFR 800 and sections 106 and 110 of the NHPA.
 2. Acknowledge the receipt of all cultural properties data provided by the BLM.
 3. In consultation with the SHPO:
 - a. The SLC shall include development of a Cultural Resources Management Element (CRME) for the transferred lands as part of their general planning effort.
 - b. The element will include provision for periodic custodial surveillance of identified cultural properties by SLC staff.

- c. All cultural resource work performed under the terms of this agreement will be carried out under the direction of a qualified archeologist/anthropologist. Qualified herein refers to the requirements listed in 43 CFR 7.9 (Appendix).
 - d. During the plan development process, SLC will consult with appropriate Native American groups.
 - e. The CRME will be developed in accordance with the appropriate sections of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.
4. Prior to any action which may affect cultural properties and in consultation with the SHPO, conduct or have conducted an appropriate level of cultural resource inventory and assessment to identify with the SHPO properties which meet the qualifying criteria for the National Register of Historic Places. Where preservation of National Register eligible properties is determined to be incompatible with the prepared land use action the SLC will, in consultation with the SHPO, develop and implement a Cultural Resource Mitigation Program consistent with the provision of 36 CFR 800, and the Advisory Council on Historic Preservation's handbook entitled "Treatment of Archeological Properties."

D. Dispute Resolution

Should the SHPO and SLC be unable to resolve any disputes which result from the provisions in Part C above other than those involving National Register eligibility, the Advisory Council on Historic Preservation shall be notified by the SLC and may assist in arbitrating the dispute. The SLC shall forward all documentation relevant to a dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council's Executive Director will either:

- A. Refer the matter to the Chairman of the Council pursuant to 36 CFR 800.6(b) (7) or;
- B. Provide the SLC with recommendations, which the SLC shall take into account in reaching a final decision

All questions regarding eligibility of properties for the National Register of Historic Places will be referred to the Keeper of the National Register, National Park Service for final resolution in accordance with 36 CFR 63.

E. Amendments

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.13 to consider such amendment. Amendments to this agreement shall be considered and executed in the same manner as the original agreement.

F. Termination

The agreement shall apply to those lands transferred and received from the date of this agreement until its termination in accord with the provisions for the termination.

Any party to this Programmatic Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the SLC, BLM and SHPO will comply with all the provisions of this agreement with regard to land transferred during the period of the agreement. In the event of termination, BLM will comply with 36 CFR 800.4 through 800.6 for any land transfers proposed after the date of termination.

G. Monitoring and Review

The SHPO may monitor activities carried out pursuant to this Programmatic Agreement and the BLM will cooperate with the Council and the SHPO in carrying out their obligations under this agreement.

H. Compliance

Execution of this Programmatic Agreement evidences that the BLM has satisfied its 106 responsibilities and afforded the Council a reasonable opportunity to comment on the transfer of lands in the State of California to SLC and that BLM has taken into account the effects of this undertaking on cultural properties.

BUREAU OF LAND MANAGEMENT

By: Ed Hasty Date: 7/28/90

CALIFORNIA STATE LANDS COMMISSION

By: _____ Date: _____

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Kathryn Austin Date: 10/31/90

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____